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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIEL JAMES HARPER,

Defendant and Appellant.

C061944

(Super. Ct. No. 04F09778)

This case comes to us on retrial after we reversed defendant Daniel James Harper's convictions because the trial court "repeatedly and erroneously told defendant that he had the right to have an attorney reappointed," leading him to enter a waiver of counsel that was not "knowing and intelligent." (*People v. Harper* (Jan. 24, 2008, C052464) [nonpub. opn.], pp. 1-2.)

In this appeal, defendant raises issues relating to sentencing enhancements and presentence credits. Finding merit only in his credits argument, we modify the judgment and affirm the judgment as modified.

FACTUAL AND PROCEDURAL BACKGROUND

About 6:00 a.m. on October 30, 2004, defendant robbed the victim at knifepoint in the parking lot of a hospital where she worked. He then forced her on a driving expedition that ended near a canal. In the process, he made her orally copulate him, threatened to kill her, repeatedly punched her, choked her to unconsciousness, slit her neck, and burned approximately 20 percent of her body. He left her to die, but she survived.

In the current retrial proceedings, the jury found defendant guilty of robbery, carjacking, kidnapping during the carjacking, kidnapping for extortion, kidnapping with the intent to commit robbery, kidnapping, aggravated mayhem, torture, assault by means of force likely to produce great bodily injury, attempted murder, evading a police officer, and forcible oral copulation, and found true various enhancements.

The court found defendant had two prior serious felonies and sentenced him to prison for life without parole and numerous other terms.

DISCUSSION

I

The Court Did Not Err In Imposing Two Serious Felony Enhancements On Each Of Defendant's Four Indeterminate Terms

The court found defendant had two prior serious felony convictions within the meaning of Penal Code¹ section 667,

¹ Further section references are to the Penal Code.

subdivision (a). The court then "impos[ed] an additional five year[s] . . . for each prior conviction imposed that he was found guilty of or found to be true, and that is imposed on each of the indeterminate terms for an additional forty year term, and that is pursuant to *People versus Williams*."

Defendant contends the court should have imposed a total of only 10 or 15 years for these priors.² He is wrong.

Section 667, subdivision (a)(1), reads in pertinent part: "any person convicted of a serious felony who previously has been convicted of a serious felony in this state . . . shall receive, in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each such prior conviction on charges brought and tried separately."

A five-year term for each prior serious felony conviction under section 667, subdivision (a)(1) is to be imposed as to each indeterminate term. (*People v. Williams* (2004) 34 Cal.4th 397, 401-405 [serious felony enhancements apply to each count of a third-strike sentence]; *People v. Misa* (2006) 140 Cal.App.4th 837, 847 [serious felony enhancement applied to indeterminate sentence for the crime of torture even though it was also imposed on a related determinate sentence]; *People v. Garcia* (2008) 167 Cal.App.4th 1550, 1560 ["*Williams* and *Misa* hold that

² In his opening brief, defendant argues the correct term for the serious felony enhancements is "10 years, 5 years for each section 667, subdivision (a) prior." In his reply brief, defendant argues "[t]he correct answer is not forty years or twenty years, or ten years, but fifteen years."

in cases where multiple indeterminate terms are imposed, all section 667, subdivision (a) five-year serious felony enhancements must be imposed on every count"].)

Here, there were four indeterminate terms to which defendant was sentenced: count 2 for carjacking (27 years to life); count 4 for kidnapping for extortion (life in prison without parole); count 11 for evading a police officer (25 years to life); and count 12 for forcible oral copulation (75 years to life). Two five-year serious felony enhancements on each of these counts was therefore appropriate. The court therefore did not err in increasing defendant's sentence by a total of 40 years for the two serious felony enhancements that attached to four counts.

We do note, however, the abstract of judgment incorrectly reflects two "667(a)" enhancements at 10 years each for a total of 20 years. The abstract must be modified to reflect two "667(a)" enhancements at 20 years each for a total of 40 years.

II

Defendant Is Entitled To 34 Extra Days Of Presentence Custody Credits

Defendant was incarcerated from his arrest on October 30, 2004, until sentencing on May 15, 2009. This amounts to 1,659 actual days and 248 days in worktime/conduct credits calculated at 15 percent pursuant to section 2933.1, subdivision (c).

The court, however, awarded him only 1,629 actual days and 244 days in worktime/conduct credits. The judgment and abstract must be modified to reflect the correct number of credits.

DISPOSITION

The judgment is modified to award defendant 1,659 actual days and 248 worktime/conduct credits. As modified, the judgment is affirmed.

The trial court is directed to prepare an amended abstract of judgment that reflects: (1) two "667(a)" enhancements at 20 years each for a total of 40 years; and (2) 1,659 actual days and 248 days in worktime/conduct credits. The trial court is further directed to forward the amended abstract to the Department of Corrections and Rehabilitation.

ROBIE, J.

We concur:

HULL, Acting P. J.

BUTZ, J.